

We do not wish it to be thought that in adopting so lenient a course we do not regard the matter as serious. We do. We think it is a very serious thing for a solicitor to act in this way; and we only hope that the solicitor in question will bear this in mind and will not misunderstand our indulgence when we say we do not propose to impose any penalty in this matter.

We think that justice will be done if a censure is recorded; which we so order.

The question arises as to costs. It is usual to require the respondent to pay costs in these cases. We think that the limit of our indulgence has already been reached in merely censuring Mr. Muthuswamy. He must pay the costs of the inquiry and of this hearing in Court.

*Order accordingly.*

Solicitors: P. Coomaraswamy; L. A. J. Smith.

### SOH KWAN HONG & ORS. v. PUBLIC PROSECUTOR

[A. Cr. J. (Ong J.) October 2, 1961]

[J.B. — Criminal Appeal No. 25 of 1961]

*Rubber Dealers Enactment, No. 65 Johore, s.13(ii) — Rubber estate labourers and rubber tappers — Charge of being a "forwarding agent."*

The appellants, who were estate labourers or rubber tappers, were carrying rubber sheet and scrap out of an estate on their bicycles when they were stopped by the police. Each of them was subsequently charged of "being a forwarding agent did receive x sheets of rubber weighing y katties without a written authority from the consignor for the despatch thereof as required under section 13(ii) of the Rubber Dealers Enactment and thereby committed an offence punishable under section 18 of the said Enactment." They were each sentenced to a fine of \$100, or one month's imprisonment.

Held: "to forward" means "to send on" and a "forwarding agent" is a person who receives rubber from a consignor for sale or consignment. In conveying the rubber from the estate to the estate owner, the appellants were acting merely as servants, carrying out the orders of their employer, and the latter, when issuing his orders to them did so as their employer and not as a consignor of goods. "Forwarding agent" must be read in its context with "consignor" and there cannot be one without the other.

### CRIMINAL APPEAL.

Omar Salleh for the appellant.

Syed Abdul Rahman (Deputy Public Prosecutor) for the respondent.

*Cur. Adv. Vult.*

Ong J.: These five appellants appeal against their conviction by the Magistrate at Pontian for an offence under section 13(ii) of the Rubber Dealers Enactment, No. 65 of Johore, for which each was sentenced under section 18 to a fine of \$100, or one month's imprisonment.

The appellants, who were estate labourers or rubber tappers, were carrying rubber sheet and scrap out of an estate on their bicycles when they were stopped by the police at Parit Kudus.

A They were subsequently charged in similar terms, except as to the amount of rubber each was carrying at the time, and for the purposes of this appeal it is necessary only to set out here, as a specimen, the charge against the 4th appellant, which is as follows:

B "That you on 12.2.61 at about 3.00 p.m. at Parit Kudus, Pontian in the State of Johore being a forwarding agent did receive 20 sheets of rubber weighing 45 katties and 1 sack of scrap rubber weighing 80 katties without a written authority from the consignor for the despatch thereof as required under section 13(ii) of the Rubber Dealers Enactment No. 65 and thereby committed an offence punishable under section 18 of the said Enactment."

C The marginal note of section 13 reads: "Written authority for sale or consignment," and subsection (ii) is as follows:

"No forwarding agent shall receive any rubber, except upon delivery to him by the consignor of a written authority for the despatch thereof."

D The only question for determination in this appeal is whether the appellants were "forwarding agents." The plain answer is "No", and I should have thought it plain as a pikestaff that estate labourers and rubber tappers can no more be called forwarding agents than the trishaw-peddler, the bullock-carter or the lorry-driver who is instructed by me to bring out the rubber from my estate to my house or store. "To forward" means "to send on," and a "forwarding agent" is a person who receives rubber from a consignor for sale or consignment. In conveying the rubber from the estate to the estate owner, the appellants were acting merely as servants, carrying out the orders of their employer, and the latter, when issuing his orders to them did so as their employer and not as a consignor of goods. E "Forwarding agent" must be read in its context with "consignor" and there cannot be one without the other. The appellants therefore were not guilty of the offence. I therefore allow the appeal and quash the convictions of all the appellants and order the fine to be refunded to each of them.

G *Appeal allowed.*

Solicitors: M. Ismail & Co.

### CHAN PHUAT KHOON v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Hill and Good J.J.A.) November 3, 1961]

[K.L. — F.M. Criminal Appeal No. 24 of 1961]

*Evidence — Dying declaration — Evidence Ordinance, 1950, s.32 — Credibility of deceased.*

H The appellant was convicted on a charge of intending to cause miscarriage of a woman, an act which caused the death of the said woman, and was sentenced to four years' imprisonment. The only evidence which unequivocally connected the appellant with the subsequent abortion and death of the woman consisted of statements made by the deceased to her husband and to the doctor at the hospital prior to her death. These statements were admitted in evidence under section 32 of the Evidence Ordinance, 1950.